# EXECUTIVE SUMMARY - ENFORCEMENT MATTER

Page 1 of 2

**DOCKET NO.:** 2007-1727-PWS-E **TCEQ ID:** RN102678927 **CASE NO.:** 34849

RESPONDENT NAME: Lumberton Municipal Utilities District

ORDER TYPE:						
X 1660 AGREED ORDER	FINDINGS AGREED ORDER	FINDINGS ORDER FOLLOWING SOAH HEARING				
FINDINGS DEFAULT ORDER	_SHUTDOWN ORDER	IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER				
AMENDED ORDER	_EMERGENCY ORDER					
CASE TYPE:						
AIR	MULTI-MEDIA (check all that apply)	INDUSTRIAL AND HAZARDOUS WASTE				
X PUBLIC WATER SUPPLY	PETROLEUM STORAGE TANKS	OCCUPATIONAL CERTIFICATION				
WATER QUALITY	SEWAGE SLUDGE	UNDERGROUND INJECTION CONTROL				
MUNICIPAL SOLID WASTE	RADIOACTIVE WASTE	DRY CLEANER REGISTRATION				
SITE WHERE VIOLATION(S) OCCURRED: Lumberton MUD, 55 West Chance Road, Lumberton, Hardin County  TYPE OF OPERATION: Public water supply						
SMALL BUSINESS:YesX						
OTHER SIGNIFICANT MATTERS: A conservice was restored. There is no record of an	omplaint was received August 16, 2007, concerning dditional pending enforcement actions regarding this	a water outage and discolored water when s facility location.				
INTERESTED PARTIES: A complaint wa Agenda.	s received, but the complainant has not expressed a	desire to protest this action or to speak at				
COMMENTS RECEIVED: The Texas Reg	ister comment period expired on March 10, 2008. 1	No comments were received.				
COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on March 10, 2008. No comments were received.  CONTACTS AND MAILING LIST:  TCEQ Attorney/SEP Coordinator: None  TCEQ Enforcement Coordinator: Ms. Andrea Linson-Mgbeoduru, Enforcement Division, Enforcement Team 2, MC 169, (512) 239-1482; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171  Respondent: Mr. Roger Fussel, District Manager, Lumberton Municipal Utilities District, P.O. Box 8065, Lumberton, Texas 77657  Mr. Nick Carter, President, Lumberton Municipal Utilities District, P.O. Box 8065, Lumberton, Texas 77657  Respondent's Attorney: Not represented by counsel on this enforcement matter						

Additional ID No(s).: PWS ID No. 1000035

# RESPONDENT NAME: Lumberton Municipal Utilities District

**DOCKET NO.:** 2007-1727-PWS-E

#### **VIOLATION SUMMARY CHART:** CORRECTIVE ACTIONS **VIOLATION INFORMATION** PENALTY CONSIDERATIONS TAKEN/REQUIRED Type of Investigation: Total Assessed: \$900 **Ordering Provisions:** X Complaint Routine Total Deferred: \$180 The Order will require the Respondent to: Enforcement Follow-up X Expedited Settlement a. Within 15 days after the effective date of \_ Records Review this Agreed Order, develop and implement, Financial Inability to Pay a standard operating procedure ensuring Date(s) of Complaints Relating to this Case: August 16, 2007 SEP Conditional Offset: \$0 that special precautions are taken, and if necessary, boil water notices are issued in the event of low distribution system Date of Investigation Relating to this **Total Paid to General Revenue: \$720** pressure, and water outages, and that Case: August 20, 2007 bacteriological samples are taken to **Site Compliance History Classification** maintain the potability of the systems Date of NOV/NOE Relating to this Case: \_\_\_ High \_\_\_ Average \_\_ Poor October 10, 2007 (NOE) drinking water supply; and Person Compliance History Classification b. Within 30 days after the effective date Background Facts: This was a complaint \_\_ High \_\_X\_ Average \_\_ Poor of this Agreed Order, submit written investigation. certification and include detailed Major Source: X Yes No supporting documentation including WATER photographs, receipts, and/or other records Applicable Penalty Policy: September 2002 to demonstrate compliance with Ordering 1) Failed to issue a boil water notification Provision a. to customers of the water system within 24 hours after a loss of distribution system pressure and water outage that occurred on August 9, 2007 [30 Tex. ADMIN. CODE §§ 290.46(q)(1) and 290.122(a)(2)(A)]. 2) Failed to collect water samples for microbiological analysis from the affected portion of the distribution system before returning it to service [30 Tex. ADMIN. CODE §§ 290.46(q)(2) and 290.46(b) and TEX. HEALTH & SAFETY CODE 341.033(b)].

	Penalty Calculation	on Worksheet (PCW)	
Policy Revision 2 (Sept	· · · · · · · · · · · · · · · · · · ·	· · · · · · · · · · · · · · · · · · ·	eptember 19, 2007
TCEQ			
DATES Assigned	15-Oct-2007		
PCW	23-Oct-2007 <b>Screening</b> 23-Oct-2007	EPA Due	
RESPONDENT/FACILITY	Lumberton Municipal Utilities District		
Reg. Ent. Ref. No.	DN402679027		
		Major/Minor Source Major	
Facility/Site Region	10-beaumont	Wajor/Willion Gource Major	
CASE INFORMATION			
Enf./Case ID No.	34849	No. of Violations 2	
Docket No.	2007-1727-PWS-E	Order Type 1660	
	Public Water Supply	Enf. Coordinator Andrea Linson-Mgbeodu	ru
Multi-Media		EC's Team EnforcementTeam 2	7773
Admin. Penalty \$ I	imit Minimum \$50 Maximum	\$1,000	
	Penalty Calcu	lation Section	
TOTAL BASE PENAL	TY (Sum of violation base penaltic	Subtotal 1	\$750
		(日本語: 10.15 ) (1.15 ) (1.15 ) (1.15 ) (1.15 ) (1.15 ) (1.15 ) (1.15 ) (1.15 ) (1.15 ) (1.15 ) (1.15 ) (1.15 )	
ADJUSTMENTS (+/-)	TO SUBTOTAL 1		
	ned by multiplying the Total Base Penalty (Subtotal 1) by	the indicated percentage.	#0
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Gulpability	No 0%	Enhancement Subtotal 4	\$0
Gulpability	Residence of the state of the same of the	<u>Liminosition</u>	
Notes	The Respondent does not meet the	e culpability criteria.	***************************************
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	11-0	Reduction Subtotal 5	\$0
Good Faith Effor	the state of the s	Reduction Subtotal o	Ψ0
Extraordinan			
Extraordinary Ordinary			ANCOME
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The state of the s	( ) (mark war x)		Office Control of Cont
Notes	The Respondent does not meet th	e good faith criteria.	
readmin for the control of the contr			
	0.94	Enhancement* Subtotal 6	\$0
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Approx.	Cost of Compliance \$150		omeone
and the second s		angula ar con a mara ang paga	
SUM OF SUBTOTAL	.S 1-7	Final Subtotal	\$750
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OTHER FACTORS A	S JUSTICE MAY REQUIRE	20% Adjustment	\$150
	Subtotal by the indicated percentage.	/I	
n de la companya de l	Enhancement recommended for reco	very of avoided costs of	
Notes	compliance.	very or avoided costs or	
	compliance.		
sustatu Phr		Final Penalty Amount	\$900
is man's Wife in the control of the			
STATUTORY LIMIT	ADJUSTMENT	Final Assessed Penalty	\$900
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DEFERRAL		20% Reduction Adjustment	-\$180
Reduces the Final Assessed Pa	enalty by the indicted percentage. (Enter number only; e.		
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Notes	Deferral offered for expedite	ed settlement.	
110169	Doional onorda lar oxpodia		

PAYABLE PENALTY

\$720

Media [Statute] Public Water Supply Enf. Coordinator Andrea Linson-Mighooduru  Compliance History Worksheet  Statute] Public Water Supply Enf. Coordinator Andrea Linson-Mighooduru  Component Number of  Written NOVs with same or similar violations as those in the current enforcement action (number of number of nu	Media [SEnf. Coordinate History SEnf. Coordinate History SEnf. Component NEW NOVS (7 O O O O O O O O O O O O O O O O O O	Statute] Public Water Supply rdinator Andrea Linson-Mgbeoduru  Compliance History Worksheet  Site Enhancement (Subtotal 2)  Number of  Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)  Other written NOVs  Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)  Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission  Any non-adjudicated final court judgments or consent decrees containing a denial of liability	O	Adjust.
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No change due to Average Performer classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7)

Compliance History

Notes

Screening Date	23-Oct-2007 <b>Docket No.</b> 2007-1727-PWS-E	PCW
Respondent	Lumberton Municipal Utilities District	Policy Revision 2 (September 2002)
Case ID No.		PCW Revision September 19, 2007
Reg. Ent. Reference No.		Minimidate
	Public Water Supply	NACA CALABATA
	Andrea Linson-Mgbeoduru	OCCUPANTA DE LA CONTRACTOR DE LA CONTRAC
Violation Number		
Rule Cite(s)	30 Tex. Admin. Code §§ 290.46(q)(1) and 290.122(a)(2)(A)	
Violation Description	Failed to issue a boil water notification to customers of the water system with hours after a loss of distribution system pressure and water outage. Specificall water notice was not issued within 24 hours of a water outage that occurred or 9, 2007.	y, a boil
	Base	Penalty \$1,000
>> Environmental, Property a		We are the second secon
Release	<b>Harm</b> Major Moderate Minor	
OR Actua		
Potentia	Percent 0%	
>>Programmatic Matrix Falsification	Major Moderate Minor	
Palsinication	x Percent 25%	
A PARTIE SEE		
Matrix Notes	100% of the rule requirement was not meet.	
Constitution of the second sec	Adjustment	\$750
DE LE		
		\$250
Violation Events		
Number of V	olation Events 1 Number of violation day	s
mark only one with an x	daily monthly quarterly Violation Base semiannual annual single event X	Penalty \$250
	One single quent is recommended	
	One single event is recommended.	
Economic Benefit (EB) for the	nis violation Statutory Limit Tes	<b>:</b> C
Estimate	d EB Amount \$100 Violation Final Pena	alty Total \$300
		or limits) \$300
	This violation Final Assessed Penalty (adjusted f	or milits) \$300

Item Cost		CHICAGO A STOURNOON OF A CONSTRUCTION	europe krasant	CONTRACTOR OF THE OR AND ADDRESS OF THE	nowa and recommendation production	Years of Depreciation
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# **Compliance History**

Customer	/Respondent/Owner-Operator:	CN600635585	Lumberton Municipal Utilitie	es District	Classification: AVERAGE	Rating: 2.84
Regulated	l Entity:	RN102678927	LUMBERTON MUD		Classification:	
ID Numbe	or(s):	WATER LICENS	PUBLIC WATER SYSTEM/SUPPLY WATER LICENSING 55 W CHANCE RD, LUMBERTON, HARDIN CO		REGISTRATION LICENSE DUNTY, TX	
TCEQ Re	dion	REGION 10 - BE	AUMONT			
	pliance History Prepared:	October 17, 2007				
	ecision Requiring Compliance History:	Enforcement				
*	ce Period:		to October 15, 2007			
TCEQ Sta	aff Member to Contact for Additional Info	rmation Regarding	this Compliance History			
Name:	Andrea Linson-Mgbeoduru		one: 512-239-1482			
		Site C	ompliance History Comp	onents		
1. Has the	e site been in existence and/or operation			Yes		-4-4-
2. Has the	ere been a (known) change in ownership	of the site during th	ne compliance period?	No		
3. If Yes,	who is the current owner?			N/A		
4. if Yes,	who was/were the prior owner(s)?			N/A		
5. When	did the change(s) in ownership occur?			N/A		
Compo	nents (Multimedia) for the Site:					
В. С.	N/A  Any criminal convictions of the state of N/A  Chronic excessive emissions events.	Texas and the fede	eral government.			
	N/A					
D. E.	The approval dates of investigations. (compared to the strength of the strengt					
<b>F.</b>	Environmental audits. N/A					
G.	Type of environmental management s	ystems (EMSs).				
	, N/A'					
Н.	Voluntary on-site compliance assessm	nent dates.				
	N/A					
1.	Participation in a voluntary pollution re	duction program.				
	N/A					
J.	Early compliance.					
	N/A					
Sites Ou	itside of Texas					
	N/A					

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# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN	§	BEFORE THE
ENFORCEMENT ACTION	§	
CONCERNING	§	TEXAS COMMISSION ON
LUMBERTON MUNICIPAL	§	
UTILITIES DISTRICT	§	
RN102678927	§	ENVIRONMENTAL QUALITY

### AGREED ORDER DOCKET NO. 2007-1727-PWS-E

#### I. JURISDICTION AND STIPULATIONS

At its \_\_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Lumberton Municipal Utilities District ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

- 1. The Respondent owns and operates a public water supply at 55 West Chance Road in Lumberton, Hardin County, Texas (the "Facility") that has approximately 6,156 service connections and serves at least 25 people per day for at least 60 days per year.
- 2. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
- 3. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about October 15, 2007.
- 4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
- 5. An administrative penalty in the amount of Nine Hundred Dollars (\$900) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Seven Hundred Twenty Dollars (\$720) of the administrative penalty and One Hundred Eighty Dollars (\$180) is deferred contingent upon the Respondent's timely and satisfactory

compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

- 6. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
- 7. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
- 8. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
- 9. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
- 10. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

#### II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have:

- 1. Failed to issue a boil water notification to customers of the water system within 24 hours after a loss of distribution system pressure and water outage that occurred on August 9, 2007, in violation of 30 Tex. ADMIN. CODE §§ 290.46(q)(1) and 290.122(a)(2)(A), as documented during an investigation conducted on August 20, 2007.
- 2. Failed to collect water samples for microbiological analysis from the affected portion of the distribution system before returning it to service, in violation of 30 Tex. ADMIN. CODE §§ 290.46(q)(2) and 290.46(b) and Tex. Health & Safety Code 341.033(b), as documented during an investigation conducted on August 20, 2007.

### III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

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Lumberton Municipal Utilities District DOCKET NO. 2007-1727-PWS-E Page 3

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 5 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Lumberton Municipal Utilities District, Docket No. 2007-1727-PWS-E" to:

Financial Administration Division, Revenues Section Attention: Cashier's Office, MC 214 Texas Commission on Environmental Quality P.O. Box 13088 Austin, Texas 78711-3088

- 2. It is further ordered that the Respondent shall undertake the following technical requirements:
  - a. Within 15 days after the effective date of this Agreed Order, develop and implement a standard operating procedure ensuring that special precautions are taken, and if necessary, boil water notices are issued in the event of low distribution system pressure, and water outages, and that bacteriological samples are taken to maintain the potability of the systems drinking water supply, as required by 30 Tex. ADMIN. CODE § 290.46.
  - b. Within 30 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

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Lumberton Municipal Utilities District DOCKET NO. 2007-1727-PWS-E Page 4

> Water Section, Manager Beaumont Regional Office Texas Commission on Environmental Quality 3870 Eastex Freeway Beaumont, Texas 77703-1892

- 3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
- 4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
- 5. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
- 6. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
- 7. Under 30 Tex. Admin. Code § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

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## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission	
	- 1985년 - 1985 - 1985년 - 1985
For the Executive Director	3/5/2008
For the Executive Director	Date
I, the undersigned, have read and understand the atta attached Agreed Order on behalf of the entity indica and conditions specified therein. I further acknowl penalty amount, is materially relying on such represen	ted below my signature, and I do agree to the terms edge that the TCEQ, in accepting payment for the
<ul><li>penalties, and/or attorney fees, or to a collecti</li><li>Increased penalties in any future enforcement</li></ul>	abmitted; I's Office for contempt, injunctive relief, additional ion agency; actions; Office of any future enforcement actions; and aw.
Signature  Nick Carter  Name (Printed or typed)	Date    Nesident
Authorized Representative of	
Lumberton Municipal Hilities District	

**Instructions**: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

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